



**MCI Telecommunications  
Corporation**

1801 Pennsylvania Avenue, NW  
Washington, DC 20006  
202 887 2048

Leonard S. Sawicki  
Director  
FCC Affairs

**EX PARTE**

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April 17, 1997

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street NW  
Washington, D.C. 20554

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**APR 17 1997**

Federal Communications Commission  
Office of Secretary

Re: CC Docket 97-121: SBC

Dear Mr. Caton:

On April 16, in response to a request by the FCC staff, I provided a copy of the attached material to Craig Brown of the Common Carrier Bureau. The document is a transcript from an Oklahoma Corporation Commission proceeding, which contains statements by an administrative law judge on Southwestern Bell's progress in meeting the Competitive Checklist.

Please include this letter and the enclosed copy on the record of this proceeding.

Sincerely,

Leonard S. Sawicki

Attachment

cc: Mr. Brown

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**bvtn -1**

**BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA**

APPLICATION OF ERNEST G.  
JOHNSON, DIRECTOR OF THE  
PUBLIC UTILITY DIVISION,  
OKLAHOMA CORPORATION  
COMMISSION TO EXPLORE THE  
REQUIREMENTS OF SECTION 271  
OF THE TELECOMMUNICATIONS  
ACT OF 1996.

CAUSE NO. PUD  
970000064

RECEIVED

APR 16 1997

CLARK, STAKEM,  
WOOD & DOUGLAS, P.C.

**TRANSCRIPT OF PROCEEDINGS**

APR 11 14 1997

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**OFFICIAL REPORTER:**

## **Bertha McMurtry**

OKLAHOMA CORPORATION COMMISSION - OFFICIAL TRANSCRIPT

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DECISION

THE COURT: Reopen the record please in PUD 970000064.

Based on the pleadings filed in this cause, accepting the testimony in the record, the comments placed into this record by Southwestern Bell--and, as we are all aware, I have made it quite clear--the burden is on Southwestern Bell to prove the case that is before us; and, of course, this is less of a case and more of an investigation into whether the Commission should allow Southwestern Bell to provide intralATA services.

As you are quite aware from the cases heard here at the Commission, I am very much in favor of promoting competition. I feel it is very desirable to open the marketplaces as we have attempted to do in many of the cases at the Commission. It is also important to look at the public interest in this area. In this matter I have checked the regulations and the law and I note that the public interest that is to be served is determined by the FCC. So I will let that part of this matter go.

Southwestern Bell I believe in this filing does not meet the requirements for intralATA relief in Oklahoma. Southwestern Bell cannot proceed under section 271 (C) (1) (b). I want to make that clear that in my opinion they can only proceed under "A". There are facilities-based providers and there are several others that have reached interconnection agreements or that have interconnection agreements pending with Bell. It is my belief that it is not a matter of whether these parties choose to meet

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1 all fourteen of those requirements or not, but it is a matter of  
2 whether Southwestern Bell is providing the ability for those  
3 parties to use those 14 different requirements.

4 The question involved here is whether Southwestern Bell has  
5 met the test. And again, I find the answer to be, "No."  
6 Several parties have argued that there is a quantity or quality  
7 level of local competition to be argued, and I find that not to  
8 be true, too. But I can determine from the testimony and the  
9 pleadings filed herein whether there are impediments or  
10 blockades being placed in the roadway to the provision of local  
11 competition. And based on the pleadings and testimony, at this  
12 time I find that answer to be, "Yes, there are impediments and  
13 blockades." That does not say that in 30 days or even 60 days  
14 from now those impediments and blockades might not be removed.

15 I would point out that from some of the schedules and  
16 implementation of certain parts of the agreement in the  
17 arbitrations that I have heard, that I believe it was at least  
18 July and I think maybe one of them was September before the  
19 implementations would have taken place. I didn't go back and  
20 look those up. You will have to refer to those in the ALJ  
21 Reports yourselves.

22 Again, I find that the approval of the STC--and I have  
23 given you pre-warning of this, everybody in here; I don't agree  
24 with the arguments on either side. I find that the approval of  
25 the STC has no bearing on this hearing. I have stated that on

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1 appeals before the Commission En Banc in another proceedings.  
2 I find the STC is a separate, distinct, offering by Bell to  
3 whoever it may be--XYZ--to come forward if they want to use that  
4 and sign it as an agreement to start providing service. I do  
5 not find that it applies in this particular case. It may, if  
6 Track "B" was appropriate, but with Track "B" not being  
7 appropriate, it does not help Bell in this matter whatsoever.  
8 It is merely an offering. Bell can only rely on the STC if no  
9 interconnection agreements had been requested.

10 If you look at 271C(1)(b) it says: "Failure to  
11 request...". If you read the rest of that, it is very plain.  
12 despite the obvious and arguments, that requests have been made,  
13 then the question comes down to, after the requests have been  
14 made the provision for such requests are being taken care of by  
15 its WB.

16 To put it in an even simpler way, I take the words out of  
17 the statute. The question revolves on the "providing access and  
18 interconnection."

19 Brooks Fiber is a qualifying facilities-based carrier under  
20 Subsection A, but Bell has not satisfied the checklist because  
21 Bell is "not providing access and interconnection" in such a  
22 manner as to provide for competition in the marketplace. You  
23 need to reread that. As I said earlier, in comparison with some  
24 of the arguments, you can't quantify--it is not a matter of  
25 competition; it is a matter of whether they are providing it and

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1 it is available. It is not a matter of if they want to accept  
2 it or not. If they choose not to accept it, that doesn't  
3 disqualify Bell from being able to meet the checklist. But at  
4 this time I find that they are not providing that.

5 Also, I strongly suggest that you go back and look at  
6 96-218 and 96-243, the ALJ's report in those and the  
7 Commission's final order regarding cost-based pricing for a  
8 determination in answering all of the questions raised here  
9 today for the evaluation of the acceptance of Southwestern  
10 Bell's rates on an interim basis in those matters and the true-  
11 up and you will find the reasoning and that will answer that  
12 question.

13 Again, a predominately facilities-based provider is not a  
14 numbers game but it is a question of access to facilities, an  
15 equal ability to compete. Southwestern Bell need not rely upon  
16 competitors to take all of the checklist items, but may  
17 demonstrate compliance using its agreements, and such items must  
18 be easily and equally accessible but must be "commercially  
19 operational" on equal terms as to all.

20 Close the record.

21 (End of decision.)  
22  
23  
24  
25